

A Brief Guide to:

# California's HIV/AIDS Laws 2003

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# **A Brief Guide to California's HIV/AIDS Laws, 2003**

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## **INTRODUCTION**

The Department of Health Services, Office of AIDS (DHS/OA) is designated by California Health and Safety Code Section 100119, as the lead agency responsible for coordinating state programs, services, and activities relating to HIV/AIDS. As such, OA is committed to assess, prevent, and interrupt the transmission of HIV, and to provide for the needs of HIV-infected Californians. OA is proud to release *A Brief Guide to California's HIV/AIDS Laws, 2003*, an annual guide to select Human Immunodeficiency Virus (HIV) and Acquired Immunodeficiency Syndrome (AIDS) codes and regulations.

*A Brief Guide to California's HIV/AIDS Laws, 2003*, focuses on issues and questions frequently raised by individuals concerning HIV/AIDS education, testing, exposure, confidentiality, and discrimination, but does not provide the full text of any referenced law, or reference court decisions that may interpret the laws. The objective of the guide is to introduce the reader, by topic, to California codes and regulations that pertain to HIV/AIDS, and is not intended to address all aspects of HIV/AIDS law or to offer legal advice. Statutes that mention HIV or AIDS are contained in the California Business and Professions, Civil, Education, Family, Government, Health and Safety, Insurance, Labor, Penal, Revenue and Taxation, Vehicle, and Welfare and Institutions Codes, as well as in the California Code of Regulations. A list of these HIV/AIDS-related code sections and regulations, and their corresponding subject matter may be found in Appendix A. Appendix B provides a glossary of select terms used within this document. Although current at the time of this publication, legislative, and/or judicial acts may potentially be amended, deleted, or added to California codes and regulations at any time.

In 2003, Governor Davis signed into law several bills that mention HIV/AIDS, including:

- Assembly Bill (AB) 458 (Chu) establishes rights of HIV-positive foster children to have fair and equal access to all available services;
- AB 879 (Koretz) mandates development of post exposure prophylaxis guidelines;
- AB 1676 (Dutra) relates to HIV testing of pregnant women;
- Senate Bill (SB) 71 (Kuehl) establishes the California Comprehensive Sexual Health and HIV/AIDS Prevention Education Act; and
- SB 1081 (Committee on Health and Human Services) related to blood banks and plasma centers.

These new laws went into effect January 1, 2004, and are listed on Appendix C.

California codes and regulations and relevant judicial case reports should be consulted directly if more detailed information is needed. The California Code of Regulations and judicial decisions are accessible at any law library and through most public libraries.

## A Brief Guide to California's HIV/AIDS Laws, 2003

Current Senate and Assembly bill information as well as California laws are accessible through the Internet on the Official California Legislative Information web site <http://www.leginfo.ca.gov>. The web site for the California Code of Regulations is <http://www.calregs.com>.

*A Brief Guide to California's HIV/AIDS Laws, 2003* is within the public domain and as such, may be reproduced at the reader's expense without written authorization or risk of penalty. A copy of the complete document may be obtained by accessing the DHS/OA web site <http://www.dhs.ca.gov/AIDS/>, or contacting OA directly at (916) 449-5900.

## **VOLUNTARY HIV TESTING**

For most individuals outside the criminal justice system, the decision to test for HIV infection is a voluntary one. In some situations, such as for employment or health insurance, mandatory testing is specifically prohibited. In other situations, such as for pregnant women, testing is voluntary but HIV information and/or testing must be offered. This section discusses those situations, the types of voluntary testing available, and the laws governing consent for testing and disclosure of test results.

### **PROHIBITIONS AGAINST MANDATORY TESTING**

#### **Employment**

Health and Safety Code Section 120980 prohibits the use of HIV testing to determine suitability for employment.

#### **Insurance**

Health and Safety Code Section 120980 also prohibits insurance providers from using an HIV test as a prerequisite to obtaining insurance. Health and Safety Code Section 1389.1 requires that health insurance applications carry a prominently displayed notice that California law prohibits health care service plans from requiring or using an HIV test as a condition of obtaining coverage. Insurance Code Sections 799-799.10 allow an exception for life and disability income insurance. See "HIV/AIDS and Insurance/Medical Plans" for greater detail of these sections.

### **MANDATORY OFFERING OF HIV/AIDS INFORMATION AND/OR TESTING**

#### **Marriage**

An HIV test is not required prior to obtaining a marriage license in California. However, Family Code Section 358 requires that information concerning AIDS and the availability of HIV testing be distributed to marriage license applicants.

#### **Pregnant Women**

In 2003, Sections 125085, 125090, and 125107 were amended and Section 125092 was added to the Health and Safety Code relating to HIV testing of pregnant women. Health and Safety Code Section 125085 was amended to require the blood specimen of a pregnant woman be tested for HIV and the results reported to the physician and surgeon or other person engaged in the prenatal care of the woman, and to the local health officer pursuant to Title 17 of the California Code of Regulations.

Section 125085 is not applicable if the licensed physician and surgeon or other person engaged in the prenatal care has knowledge that the woman is already infected with HIV.

In 2003, Health and Safety Code Section 125090 was amended to require the licensed physician and surgeon or other person engaged in the prenatal care of a pregnant woman or attending the woman at the time of delivery to inform the woman of the intent to perform a test for HIV infection; the routine nature of the test; the purpose, risks and benefits of the test; the risks of perinatal transmission of HIV and that treatments are known to decrease the risks of perinatal transmission; and that the woman has a right to accept or refuse the test.

Documentation of the woman's acceptance of the test shall be on a form developed by the Department of Health Services, Office of AIDS (DHS/OA) or a form that is substantially equivalent in content, signed by the woman, and maintained in the medical record. The requirements of Section 125090 also apply during the final prenatal care standard medical tests if the medical records of the pregnant woman do not document a test for HIV.

The physician and surgeon or other person engaged in the prenatal care of the pregnant woman or attending the woman at the time of labor, delivery, or postpartum care shall ensure that the woman receives information and counseling, as appropriate, to explain the results and the implications for the mother's and infant's health, including any follow-up care that is indicated. If the woman tests positive for HIV she shall, whenever possible, be referred to a provider or provider group specializing in prenatal care for HIV-positive women.

Section 12092 was added in 2003 to require DHS/OA in consultation with other stakeholders to develop culturally sensitive informational material in English, Spanish, and other languages used by the Department when providing information to clients under the Medi-Cal program.

Health and Safety Code Section 125107 requires prenatal care providers to offer HIV information and counseling to every pregnant patient for whose prenatal care the provider has primary responsibility. This section was amended in 2003 to clarify that the completion of a statement of acceptance of an HIV test shall be sufficient documentation of consent, and no laboratory or health care provider shall require additional consent forms for HIV testing from the pregnant woman.

### **ANONYMOUS TESTING**

In anonymous HIV testing, the identity of the test subject is not linked to the test result. In accordance with Health and Safety Code Sections 120885-120895, anonymous testing is available at Alternative Test Sites (ATS) administered by county health departments. HIV tests at these sites are free and test site counselors do not collect any identifying information (e.g., name, Social Security Number, driver's license, etc.) from test subjects. Instead, test subjects receive a unique number that corresponds to



their specimen and test result. Health and Safety Code Section 120895 requires that, at a minimum, individuals testing at an ATS be informed about the validity and accuracy of the HIV antibody test before it is performed, and that the results of this test be given in person.

Anonymous testing is also available in some clinical settings other than an ATS; for example, some family planning and sexually transmitted disease clinics. In addition, anonymous testing is now available through the use of an in-home collection kit. Using the kit, an individual draws a blood sample, submits it by mail, and receives test results by phone. As with the ATS, the in-home collection kit links the blood sample to the individual using a number rather than a name or any other personal identifier.

### **CONFIDENTIAL TESTING**

In contrast to anonymous testing, confidential testing links the test subject's identity to the test result. However, the confidentiality of test results is specifically protected by California law, which prohibits unauthorized disclosure (see "Disclosure of Test Results"). Confidential testing is available at publicly-funded confidential test sites as well as private health care settings. To protect the privacy of individuals taking an HIV test, Health and Safety Code Section 120975 provides that no person shall be compelled in any civil, criminal, administrative, legislative, or other proceeding to identify any individual who takes an HIV test.

### **RAPID HIV TESTING**

Section 120917 of the Health and Safety Code authorizes participation by the Department of Health Services, Office of AIDS in a rapid HIV test research program conducted with the federal Centers for Disease Control and Prevention. In Department-designated HIV counseling and testing sites, an HIV counselor who is trained by the Office of AIDS may, under identified conditions, perform any HIV test that is classified as waived under the federal Clinical Laboratory Improvement Act. A rapid HIV test is a screening test that produces results quickly enough to allow for same-day results to be given to the patient. Under the rapid HIV test research program, the Department of Health Services may perform and report clinical test results using a rapid HIV test for diagnosis, prior to test approval by the federal Food and Drug Administration. A second, approved test shall be used to confirm initially reactive test results.

### **CONSENT REQUIRED FOR TESTING**

#### **In General**

Except in the case of a treating physician and surgeon, Health and Safety Code Section 120990 requires written consent for HIV testing. The statute requires a treating physician and surgeon to obtain informed consent for HIV testing. Health and Safety

Code Section 120990 requires specific consent for HIV testing - a general consent for medical care is not sufficient.

*At an Alternative Test Site*

Health and Safety Code Section 120990 does not apply to tests performed at an ATS, tests on a cadaver, donated body or organs, or blood tested anonymously as part of a scientific investigation. As previously noted, Health and Safety Code Section 120895 requires that individuals testing at an ATS be informed about the validity and accuracy of the antibody test before it is performed.

*Incompetent Persons and Minors*

In the case of an incompetent person, Health and Safety Code Section 121020 authorizes a parent, guardian, conservator, or other person legally authorized to make health care decisions to give written consent for an HIV test. Minors under the age of 12 are considered not competent to give consent. Minors who are wards of the court may receive written consent from the court.

**DISCLOSURE OF TEST RESULTS**

*Laboratory Test Results*

Section 123148 of the Health and Safety Code permits certain laboratory test results to be posted on the Internet or other electronic method if requested by the patient and deemed appropriate by the health care provider who ordered the test. Consent of the patient is to be obtained in a manner consistent with requirements of Section 56.11 of the Civil Code. The electronic delivery of clinical laboratory test results or any other related results for HIV antibody tests are specifically prohibited under this statute, regardless of authorization.

*Written Authorization Requirements*

Health and Safety Code Section 120980 requires that persons responsible for the care and treatment of an individual who takes an HIV test obtain written authorization prior to any disclosure of the individual's test results in an identifying manner. This statute requires a separate written authorization for each disclosure, and must state to whom the results will be disclosed. Further, the statute provides for a civil penalty of up to \$1,000 for each negligent unauthorized disclosure and \$1,000-\$5,000 for each willful disclosure. A negligent or willful disclosure that results in economic, bodily, or psychological harm to the test subject is a misdemeanor punishable by imprisonment of up to one year and/or a fine of up to \$10,000.

*Physician Exceptions to Written Authorization Requirements*

Inclusion of a person's HIV test result in his/her medical record is not considered a disclosure under Health and Safety Code Section 120980. Health and Safety Code Section 120985 permits a physician who orders an HIV test to record the results in the patient's medical record, or otherwise disclose it without written authorization to the

patient's health care providers for the purpose of diagnosis, care, or treatment of that patient. Recording or disclosing test results in accordance with Section 120985 does not authorize further disclosure unless otherwise permitted by law. Providers of health care are to be defined as in Civil Code Section 56.05(d), with the exclusion of group practice prepaid health care service plans.

*Partner Notification Exception to Written Authorization Requirements*

Health and Safety Code Section 121015 permits (but does not require) a treating physician and surgeon to disclose an individual's confirmed positive HIV test result to the local health officer, the individual's spouse, or any person reasonably believed to be the sexual or needle-sharing partner of the individual. Such disclosure may be made only for the purpose of diagnosis, care, and treatment of the person notified or to interrupt the chain of HIV transmission. The disclosure must not include any identifying information about the HIV-infected individual.

Prior to disclosing an individual's test result, the physician and surgeon must discuss the results with the patient and offer appropriate emotional and psychological counseling, including information on the risks of transmitting HIV and methods of avoiding those risks. Further, the physician and surgeon must inform the patient of the intent to notify partners and must attempt to obtain the patient's voluntary consent for partner notification. Upon notifying a spouse or partner of an HIV-infected person, the physician and surgeon must refer the spouse or partner for appropriate care, counseling, and follow-up.

County health officers may notify a spouse or partner of an HIV-infected individual but cannot identify the person or the physician and surgeon making the report. As with physicians and surgeons, county health officers must refer the spouse or partner for appropriate care and follow-up. Upon completion of partner notification efforts, all records regarding the contacted person maintained by the county health officer, including but not limited to identifying information, must be expunged. For as long as records of contact are maintained, the county health officer must keep confidential the identity and HIV status of the individual tested as well as the identity of the persons contacted.

*Other Exceptions to Written Authorization Requirements*

Health and Safety Code Section 121010 allows disclosure of an individual's HIV test results without prior authorization to the following:

- the subject of the test or the subject's legal representative, conservator, or other person authorized to consent to the test;
- the test subject's provider of health care (Civil Code Section 56.05) but not a health care service plan;
- an agent or employee of the subject's provider of health care who provides direct care and treatment;

- a provider of health care who procures, processes, distributes, or uses a human body part donated pursuant to the Uniform Anatomical Gift Act; and
- a designated officer of an emergency response employee and from that designated officer to the employee regarding possible exposure to HIV/AIDS.

### **TRAINING OF HIV TEST COUNSELORS**

Health and Safety Code, Section 120871 relates to the training of HIV counselors. This statute requires California Department of Health Services to authorize the establishment of training programs for counselors for publicly funded HIV testing programs, by specified community-based nonprofit organizations. Participating organizations are required to follow curriculum content and design for these trainings that is approved by the Department of Health Services.

## **MANDATORY HIV TESTING OUTSIDE THE CRIMINAL JUSTICE SYSTEM**

### **PROFESSIONAL BOXERS AND MARTIAL ARTS FIGHTERS**

Business and Professions Code Section 18712 requires that any person applying for a new or renewed license as a professional boxer or professional martial arts fighter shall present evidence that he or she has tested negative for HIV within 30 days of the date of the application. All medical information obtained under this Section, including the HIV test result, is confidential. If the State Athletic Commission denies or revokes a license due to a positive HIV test, the stated cause for denial shall be "medical reasons." An applicant or licensee may request a closed hearing to appeal the commission's decision.

## **MANDATORY HIV TESTING WITHIN THE CRIMINAL JUSTICE SYSTEM**

Under some circumstances, individuals accused or convicted of certain crimes may be required to take an HIV test and the results may be disclosed to the crime victim and used to enhance the penalty for certain subsequent crimes. In addition, individuals confined in correctional settings may also be required to take an HIV test under certain circumstances and the test results disclosed to specified persons. These testing and disclosure provisions are exceptions to the general prohibitions against HIV testing and disclosure without consent (see Voluntary HIV Testing).

### **CERTAIN SEX OFFENSES OTHER THAN PROSTITUTION**

Penal Code Section 1202.1 requires persons convicted of certain sex offenses and minors adjudged wards of the court or placed on probation for such offenses, to submit to an HIV test. These offenses include rape (including statutory and spousal rape), and unlawful sodomy or oral copulation. In addition, testing is required for individuals convicted of lewd or lascivious acts with a child if the court finds there is probable cause

to believe that a bodily fluid capable of transmitting HIV was transferred from the defendant to the victim. The clerk of the court must convey the test results to the Department of Justice and the local health officer. The prosecutor must advise the victim of the right to receive the test results and refer the victim to the local health officer for counseling. The local health officer must release the test results to the crime victim if the victim so requests. The victim, in turn, may disclose the test results as he or she deems necessary to protect his or her health and safety, or the health and safety of his or her family or sexual partner. The local health officer must also disclose the test results to the test subject and provide appropriate counseling. The Department of Justice must disclose the test results of any previously convicted sex offender upon the request of the prosecutor or defense attorney in connection with any subsequent investigation or prosecution of the test subject for prostitution or certain sex crimes.

Penal Code Section 12022.85 provides for a three-year sentence enhancement for a conviction of rape (including statutory and spousal rape), or unlawful sodomy or oral copulation, if the defendant knew that he or she was HIV positive at the time of the commission of the offense. An HIV test result obtained pursuant to Penal Code Section 1202.1 or Penal Code Section 1202.6 may be used to prove this knowledge.

In contrast to Penal Code Section 1202.1, which requires HIV testing of persons *convicted* of certain sex crimes, Health and Safety Code Section 121055 permits testing of persons, including minors, *charged* with certain sex crimes. These crimes include, but are not limited to, rape (including statutory and spousal rape), unlawful sodomy or oral copulation, and lewd or lascivious acts with a child. At the request of the alleged victim, if the court finds probable cause to believe that a transfer of a bodily fluid took place between the defendant and the alleged victim during the alleged crime, the court shall order the defendant to submit to an HIV test. The test results must be provided to the defendant, the alleged victim, and if the defendant is incarcerated or detained, to the officer in charge and the chief medical officer of the detention facility. Health and Safety Code Section 121065 forbids the use of test results as evidence in any criminal proceeding.

## **PROSTITUTION**

Penal Code Section 1202.6 requires that individuals convicted of prostitution complete instruction in the causes and consequences of AIDS and submit to an HIV test. The test results must be disclosed to the test subject, the court, and the California Department of Health Services (DHS). The court and DHS must maintain the confidentiality of the report; however, DHS must furnish copies of the report to a district attorney upon request.

If an individual has a previous conviction for prostitution or any of the sex offenses listed in Penal Code Section 1202.1(c), tested positive for HIV in connection with that

conviction, and was informed of the test results, Penal Code Section 647f elevates any subsequent prostitution conviction from a misdemeanor to a felony.

### **ASSAULTS ON PEACE OFFICERS, FIREFIGHTERS, OR EMERGENCY MEDICAL PERSONNEL**

Health and Safety Code Section 121060 allows court-ordered HIV testing of any person charged with interfering with the official duties of a peace officer, firefighter, or emergency medical personnel by biting, scratching, spitting, or transferring blood or other bodily fluids on, upon, or through the skin or membranes of the peace officer, firefighter, or emergency medical personnel. The test result must be reported to the accused, each peace officer, firefighter, or emergency medical personnel named in the petition for the test, their employing entities, and if the accused is in custody, the officer in charge and the chief medical officer of the detention facility. Health and Safety Code Section 121065 forbids use of the test results as evidence in any criminal proceeding and requires that all recipients of the results other than the accused maintain the confidentiality of the accused's identity. An exception is made for disclosures that may be necessary to obtain medical or psychological care or advice.

### **OTHER CRIMES**

Penal Code Section 1524.1 allows, at the request of the crime victim, court-ordered HIV testing of any person charged with a crime. Before issuing a search warrant for the defendant's blood, the court must find that there is probable cause to believe that blood, semen, or other bodily fluids have been transferred from the defendant to the victim and that there is probable cause to believe the defendant committed the alleged offense. A victim may also request HIV testing of the accused in the case of certain alleged sex crimes that are the subject of a police report but have not been charged. This provision applies only if the accused has been charged with some separate sex crime, there is probable cause to believe that the accused committed the uncharged offense, and there is probable cause to believe that blood, semen, or certain other bodily fluids could have been transferred from the accused to the victim.

The prosecutor must advise the victim of the right to request testing and must refer the victim to the local health officer for help in determining whether to make such a request. The local health officer is also responsible for disclosing the test results to the victim and the accused and must offer appropriate counseling to each. The prosecutor may not use the test result to determine whether to file a criminal charge.

### **INDIVIDUALS IN CUSTODY**

Penal Code Sections 7510-7519 establish procedures through which custodial and law enforcement personnel are required to report situations in which they have reason to believe they have come into contact with bodily fluids of an inmate, a person arrested or taken into custody, or a person on probation or parole, in a manner that could result in HIV infection. These reports must be filed with the chief medical officer of the

applicable custodial facility. The employee may also request HIV testing of the person who is the subject of the report. The chief medical officer shall order a test only if there is a significant risk that HIV was transmitted.

These sections also permit inmates to file similar requests stemming from contacts with other inmates. In addition, the chief medical officer may order an HIV test in the absence of any incident report or request from an inmate or employee if the medical officer concludes an inmate exhibits clinical symptoms of HIV infection or AIDS. Further, custodial officers or correctional staff may file a report of any observed or reported behavior known to cause the transmission of HIV. The chief medical officer may investigate these reports and require HIV testing of any inmate as deemed necessary as a result of the investigation. Penal Code Section 7540 makes it a misdemeanor to file a false report or request for testing or to use or disclose test results or confidential information in violation of any of the provisions of Sections 7500-7555.

California Code of Regulations, Title 22, Sections 41100-41150 interpret the procedural aspects of Penal Code Sections 7510-7519.

Penal Code Section 7553 permits DHS to conduct periodic anonymous unlinked serologic surveys of all or portions of the inmate population or persons under custody within a city or county.

Health and Safety Code Section 121070 establishes a separate procedure for testing persons in custody. It requires that any medical personnel working in any state, county, or city prison, jail, or other detention facility who receives information that an inmate has been exposed to or is infected with HIV or has an AIDS-related condition must report that information to the officer in charge of the detention facility. The officer in charge must notify all employees, medical personnel, contract personnel, and volunteers at the facility who have direct contact with the inmate or the inmate's bodily fluids. Those receiving this information must maintain the confidentiality of any personally-identifying data. Any willful unauthorized disclosure is punishable as a misdemeanor.

## **WARDS OF THE YOUTH AUTHORITY**

Welfare and Institutions Code Section 1768.9 requires a person under the jurisdiction of the Department of the Youth Authority to submit to an HIV test if the chief medical officer of the facility determines the person exhibits clinical symptoms of AIDS. A court order may be sought if the person refuses testing. The test subject must receive appropriate counseling and the test results. The chief medical officer may disclose the test results to the facility superintendent or administrators and, if the test results are indicative of HIV infection, to the test subject's known sexual or needle-sharing partners within the facility. Health and Safety Code Section 120995 exempts the Youth Authority from obtaining the test subject's written consent.

## **PAROLEES AND PROBATIONERS**

Penal Code Section 7520 requires correctional officials to notify parole and probation officers when an individual with HIV infection or AIDS is released. The parole or probation officer must then ensure that the parolee or probationer contacts the county health department or a physician and surgeon for information on counseling and treatment options available in the county of release.

Penal Code Section 7521 requires that if the HIV-infected individual has not informed his or her spouse of his or her condition, the parole or probation officer may ensure that the spouse is notified by the chief medical officer of the correctional institution or the physician and surgeon treating the spouse or the parolee or probationer. If a parole or probation officer enlists the assistance of local law enforcement officers in taking a parolee/probationer into custody who is HIV infected or has AIDS and also has a record of assault on a peace officer, the parole or probation officer must inform the law enforcement officers of the parolee/probationer's condition.

Penal Code Section 7540 makes it a misdemeanor to use or disclose test results or confidential information obtained in violation of Penal Code Section 7520 or 7521. Penal Code Section 7505 provides that Sections 7500-7550 shall be operative only in those cities and/or counties that adopt a resolution affirming that it shall be operative.

## **EXPOSING ANOTHER PERSON TO HIV**

Health and Safety Code Section 120291 states that any person who exposes another to HIV by engaging in unprotected sexual activity is guilty of a felony, when the infected person: 1) knows he/she is infected; 2) has not disclosed his/her HIV-positive status; and 3) acts with the intent to infect the other person with HIV. The felony charge is punishable in the state prison for three, five, or eight years. Unless the victim requests otherwise, the name and any other identifying characteristics of the victim shall remain confidential.

Health and Safety Code Section 120292 denotes the parameters for disclosing identifying information and other records of the diagnosis, prognosis, testing, or treatment relating to HIV in a criminal investigation of a violation of Section 120291. Orders of the court shall not be based on the sexual orientation of the defendant, used to determine the HIV status of a crime victim, or intended to restrict or eliminate anonymous AIDS testing.

## **OCCUPATIONAL EXPOSURE TO HIV/AIDS**

State law requires or allows certain individuals who may have been occupationally exposed to HIV to learn the HIV status of the individual who was the source of the



exposure. This section outlines the circumstances in which exposure notification requirements apply.

### **PREHOSPITAL EMERGENCY MEDICAL PERSONNEL**

Health and Safety Code Sections 1797.188 and 1797.189 require county health officers to notify prehospital emergency medical care personnel, volunteer or paid, when they have been exposed to a reportable disease, such as AIDS, in the course of providing emergency services or rescues. The exposure must be one capable of transmitting the disease. The notification requirement applies only under specified circumstances in which the exposed personnel's names and phone numbers have been provided to the health facility or the chief medical examiner-coroner at the time a patient is transferred, and that information is subsequently relayed to the county health officer. Further disclosures are prohibited except as otherwise authorized by law. Personnel to whom this statute applies include authorized registered nurses or mobile intensive care nurses, emergency medical technicians, paramedics, lifeguards, firefighters, peace officers, and physicians and surgeons who provide prehospital emergency medical care or rescue services.

### **FUNERAL DIRECTORS**

When an individual with AIDS dies in a health facility or the decedent's body has been in the possession of the chief medical examiner-coroner, Health and Safety Code Sections 1797.188 and 1797.189 require the health facility, the chief medical examiner-coroner, or the county health officer to notify the funeral director removing the body that the decedent had AIDS.

### **HEALTH CARE PROVIDERS, FIRST RESPONDERS, FORENSIC SCIENTISTS, AND OTHERS WHO MAY BE OCCUPATIONALLY EXPOSED**

Health and Safety Code Sections 121130-121140 allow individuals who experience a significant exposure (capable of transmitting HIV) to the blood or other potentially infectious material of a patient, during the course of rendering health care-related emergency response, or other occupationally-related services, to request information on the source patient's HIV status. If the source patient is already known to be HIV infected, the patient's attending physician may disclose this information to the exposed individual. The attending physician must first attempt to obtain the source patient's consent to release this information, but consent is not required.

If the source patient's HIV status is unknown, and the exposed individual tests HIV negative on a baseline test after exposure, the attending physician of the source patient shall make a good faith effort to locate and obtain the voluntary, written informed consent of the source patient to test existing samples of blood or other tissue for HIV. If the source patient is located, he or she must be provided with medically appropriate pretest counseling. If consent is given for testing, the source patient is to be referred for appropriate post-test counseling and follow-up. The source patient who refuses to

provide consent must be informed that the testing of the available blood or tissue sample will proceed without consent and that the test results will be provided to the exposed individual. The source patient may elect not to receive the results of the HIV test. As otherwise required by law, the exposed individual must maintain the confidentiality of the results.

Section 121135 of the Health and Safety Code authorizes, under specified conditions, an HIV test on any available blood or patient sample of a source patient, if the source patient is unable to provide informed consent. The inability to contact the source patient, or legal representative of the source patient, after a good faith effort to do so, shall constitute a refusal to consent, and HIV testing of available blood or tissue sample may be performed. If the source patient cannot be located after a good faith effort, or if the source patient refuses to give consent, then the available blood or tissue sample may be tested for HIV without consent. If the informed consent of the source patient cannot be obtained because the source patient is deceased, consent to perform an HIV test on any blood or patient sample of the source patient, legally obtained in the course of providing health care services at the time of the exposure event, shall be granted.

Health and Safety Code Section 121056 allows a criminalist, toxicologist, forensic pathologist or any employee who conducts DNA or other forensic testing to file an ex parte petition to have a specimen tested for HIV if, within the scope of his or her duties, the person performing the forensic test has skin or membrane contact with blood or other bodily fluids. Before filing the petition to the court, the requesting party must make a reasonable effort to obtain the consent of the person whose specimen is to be tested. Copies of the test results will be sent to the requesting employee, the employing agency, officer or entity, to the person whose specimen was tested, and to the officer in charge and the chief medical officer of the facility where the individual is incarcerated or detained. Under these provisions, the confidentiality of test results shall be maintained, and the use of test results in criminal or juvenile proceedings is prohibited.

## **POST-EXPOSURE PROPHYLAXIS (PEP)**

In 2003, Health and Safety Code Sections 121348 and 121348.2 were added to mandate the Office of AIDS to convene a task force to develop recommendations for the use of post-exposure prophylaxis in the general population for the prevention of HIV infection. The task force must not exceed ten individuals, will serve without compensation and shall review and consider PEP guidelines already established in other jurisdictions, the United States and abroad. The Office of AIDS and a physician shall serve as chair and co-chair respectively. Recommendations produced by the task force will be approved by the Department of Health Services (DHS) in consultation with the co-chair and be posted on the DHS web site.

## **HIV-INFECTED INDIVIDUALS AND MEDI-CAL**

Numerous statutes mention HIV/AIDS and Medi-Cal (California's Medicaid program). The following specifically addresses drug treatment services.

### **DRUG TREATMENT SERVICES**

Existing law provides for Medi-Cal to establish a program to provide drug treatments to qualified persons infected with HIV. Government Code Section 16531.1 created a continuously appropriated Medical Providers Interim Payment Fund to ensure uninterrupted delivery of health care services to Medi-Cal beneficiaries, and critical drug treatments to persons infected with HIV during any portion of a fiscal year (prior to September 1) in which the state budget has not been signed.

## **HIV AND WORKERS' COMPENSATION**

### **RELEASE OF MEDICAL INFORMATION**

Labor Code Section 3762 and Civil Code Section 56.31 relate to HIV and workers' compensation. With identified exceptions, these statutes prohibit the disclosure or use of medical information regarding the HIV status of an employee who has filed a workers' compensation claim without written authorization from the claimant. Exceptions include: 1) if the patient is an injured worker claiming to be infected with or exposed to HIV through an incident arising out of and in the course of employment; 2) if the diagnosis of the workers' compensation injury would affect the employer's premium; and 3) medical information that a treating medical provider deems is necessary for the employer to have in order to modify the employee's work duties.

### **DEATH BENEFITS**

Sections 5406-5406.6 of the Labor Code relate to the statute of limitations for collecting workers' compensation benefits for the death of a health care worker, public safety employee, or certain correctional peace officers from an HIV-related disease. These statutes state that a proceeding to collect benefits must commence within one year from the date of the death, provided that certain events have occurred.

## **REPORTING OF HIV AND AIDS CASES**

On July 1, 2002, California's regulations to report HIV infection became effective. The regulations, located in the California Code of Regulations (CCR), Title 17, Division 1, Chapter 4, Subchapter 1, Article 3.5, Sections 2641.5-2643.2, require clinical laboratories and health care providers to report HIV infection by Non-Name Code to the local health officer, and mandate that local health officers report unduplicated cases to DHS. California has reported AIDS cases since 1983, in accordance with the federal CDC guidelines. CCR, Title 17, Section 2500, requires health care providers to report

AIDS cases by name to the local health officer. Section 2502 requires local health officers to report to DHS.

Health and Safety Code Section 121025 protects the confidentiality of AIDS-related public health records that were developed or acquired by state or local public health agencies. Any personally identifying information in these records must remain confidential and cannot be disclosed without written authorization from the person named in the record or his or her guardian or conservator, except to other local state, or federal public health agencies or researchers who need the information to carry out their duties in the investigation, control, or surveillance of disease. Any individuals to whom the information is disclosed are also required to keep the information confidential. No confidential public health record may be required to be disclosed in the context of any civil, criminal, or administrative proceeding.

Health and Safety Code Section 121340 requires DHS, in consultation with various entities, to determine, no later than December 31, 2005, whether California's HIV reporting system has achieved compliance with standards and criteria necessary to ensure continued federal funding through the Ryan White CARE Act. DHS is directed to inform the Legislature of its findings and to report all written communication from CDC that indicates that California's system has not or will not meet federal standards and criteria for HIV reporting.

## **HIV/AIDS AND THE BLOOD SUPPLY**

### **HIV TESTING OF BLOOD DONORS**

Health and Safety Code Section 1603.1 requires that all blood and blood components to be used in humans be tested for HIV. Exceptions to the testing requirement are made for:

- blood/blood components used for research or vaccination programs pursuant to an informed consent;
- blood products released for transfusion in emergency circumstances; and
- blood used for autologous purposes.

In 2003, Health and Safety Code Section 1603.1 was amended to delete the requirements of the Department of Health Services to compile and distribute the blood Donor Deferral Registry to blood banks and plasma centers. It also amended language to require a physician, hospital, or other healthcare provider to report AIDS cases, HIV infections, and viral hepatitis, including transfusion-associated cases or infections, to the local health officer, within the timeframes established pursuant to Title 17 of the California Code of Regulations.

Health and Safety Code Section 1603.3 requires that the donors of blood or blood components receive written notice, and sign a written statement confirming the notification, that their blood or blood components will be tested for HIV.

Health and Safety Code Section 1621.5 makes it a felony, punishable in prison for two, four, or six years, for any person who knows that he or she is infected with HIV to donate blood, breast milk, semen, body organs, or other tissues. Exemptions include those who are mentally incompetent, who donate blood for an autologous donation, and who self-defer their blood at a blood bank. In a criminal investigation for a violation of this section, the results of an HIV blood test may only be released pursuant to a search warrant, a judicial subpoena, or a court order.

### **TRANSFUSION-RELATED AIDS CASES**

Health and Safety Code Section 1603.1 requires physicians and hospitals to report immediately to the local health officer all transfusion-associated HIV infections or AIDS cases. The local health officer is required to identify which blood bank or plasma center is the source of the infectious blood and report this information to the blood bank or plasma center that issued the blood. The blood bank or plasma center shall investigate the donor source of infected blood. The local health officer shall contact all persons who have confirmed cases of AIDS to suggest appropriate treatment alternatives and for the purposes of epidemiological studies and follow-up.

### **HIV/AIDS EDUCATION AND SCHOOLS**

In 2003, Sections 51201.5, 51229.8, 51550, et seq, and 51820 of the Education Code were repealed and Sections 51930-51939 of the Education Code were added.

Section 51930 establishes the California Comprehensive Sexual Health and HIV/AIDS Prevention Education Act and defines HIV/AIDS education and prevention.

Section 51934 addresses HIV/AIDS prevention education. It mandates school districts to ensure that all pupils in grades 7 through 12 receive HIV/AIDS prevention education from instructors trained in the appropriate courses. Each pupil shall receive this instruction at least once in junior high or middle school and at least once in high school. HIV/AIDS prevention education shall include information and discussion on the nature of HIV/AIDS and its effects on the human body, manner in which HIV is transmitted and not transmitted, methods to reduce the risk of HIV infection, public health issues associated with HIV/AIDS, local resources for HIV testing and medical care, assistance in overcoming peer pressure, risk reduction, and societal views on HIV/AIDS. This information and discussion shall accurately reflect the latest information and recommendations from the United States Surgeon General, Centers for Disease Control and Prevention, and the National Academy of Sciences.

Sections 51935 and 51936 clarify in-service training requirements. School districts are required to plan and conduct in-service training for school personnel that provide HIV/AIDS prevention education and cooperate and collaborate with the teachers who provide HIV/AIDS prevention education. In-service trainings may be conducted periodically to enable personnel to learn new scientific understanding of HIV/AIDS and shall be voluntary for personnel who have demonstrated expertise or received in-service training from the Department of Education or Centers for Disease Control and Prevention. School districts may contract with outside consultants that have expertise in comprehensive sexual health education or HIV/AIDS prevention education, or both.

Section 51937 established Article 5. Notice and Parental Excuse, whereas to encourage pupils to communicate with their parents or guardians about human sexuality and HIV/AIDS. The intent of this section is to make it easier for parents and guardians to review materials and evaluation tools related to comprehensive sexual health education and HIV/AIDS prevention education, and if they wish, to excuse their children from participation in all or part of the instruction or evaluation.

Section 51938 enables a parent or guardian of a pupil to excuse a child from all or part of the comprehensive sexual health education, HIV/AIDS prevention education, and assessments related to that education.

Section 51939 stipulates that a pupil may not attend any class in comprehensive sexual education or HIV/AIDS prevention education, or participate in any anonymous or voluntary, confidential test, questionnaire, or survey on pupil health behaviors and risks, if the school has received a written request from the pupil's parent or guardian excusing the pupil from participation.

## **FACILITATING THE ADOPTION OF HIV-POSITIVE CHILDREN**

Welfare and Institutions Code Section 16135 facilitates the adoption of court-dependent children who are HIV positive by establishing a program for special training and services to adoptive families. Participating counties shall provide training to adoptive parents that includes a curriculum of infant and early childhood development issues specific to: 1) caring for a child who tests HIV positive, 2) special medical needs and disabilities, and 3) HIV/AIDS in children.

## **HIV/AIDS AND INSURANCE/MEDICAL PLANS**

### **ELIGIBILITY**

Health and Safety Code Section 121025 protects the confidentiality of public health records related to persons with AIDS. This section also prohibits the use of such records to determine the insurability of any person. In addition, Health and Safety Code Section 120980 prohibits the use of the results of an HIV test for determination of insurability, except for life and disability insurance under certain conditions. Similarly, Insurance Code Section 799.09 prohibits a life or disability income insurer from requiring an HIV test if results of the test would be used for determining eligibility for hospital, medical, or surgical insurance coverage, or eligibility for coverage under a nonprofit hospital service plan or health care service plan. However, Insurance Code Sections 799-799.10 allow insurers to refuse to grant a life or disability income policy on the basis of a positive HIV test. An insurer that requires an HIV test for life or disability insurance must secure written informed consent, pay for the test, and provide a list of available counseling resources. The insurer may not use the marital status or the known or suspected homosexuality or bisexuality of an applicant as a condition for determining whether to require an HIV test. If an insurer does require an HIV test, the insurer must disclose the test results to the applicant's designated physician or to the applicant.

### **USE OF AN HIV TEST**

Insurance Code Section 10291.5 requires that disability insurance policies that cover hospital, medical, or surgical expenses must include a prominent notice that California law prohibits requiring or using an HIV test as a condition of obtaining health insurance.

### **AIDS VACCINE**

The Board of Administration of the Public Employees' Retirement System is authorized to contract with carriers for health benefits plans and to approve health benefits offered by employee organizations in order to provide health benefits coverage to specified public employees. Section 22793.2 of the Government Code, Section 1367.45 of the Health and Safety Code, and Section 10145.2 of the Insurance Code address coverage for an AIDS vaccine that is approved for marketing by the federal Food and Drug Administration and recommended by the United States Public Health Service. All three statutes state that plans or policies shall not be required to provide coverage for AIDS vaccine clinical trials or for investigational new drug application. Section 1367.45 of the Health and Safety Code further specifies that every individual or group health care service plan contract that is issued, amended, or renewed on or after January 1, 2002, that covers hospital, medical, or surgery expenses shall provide coverage for an approved vaccine. Insurance Code Section 10145.2 contains similar language for specified policies that are issued, amended, or renewed on or after July 1, 2002.

## **ACCESS TO HIV/AIDS SPECIALISTS**

Health and Safety Code, Section 1374.16 specifies that HIV/AIDS be interpreted broadly as a condition or disease that requires specialized medical care. It provides for 'standing referrals' to maximize access of an HIV-infected medical plan enrollee to providers with demonstrated expertise in the field.

## **HIV/AIDS AND DISCRIMINATION**

Federal and state statutes prohibit discrimination in employment, housing, and public accommodations against individuals with a disability, including persons with HIV infection.

### **FEDERAL LAW**

Discrimination against a person with a disability, including HIV infection, is prohibited in a variety of ways by federal law. The most comprehensive federal legislation is the Americans with Disabilities Act of 1990 (ADA [42 U.S.C. Section 2101-12213]) which prohibits discrimination against disabled individuals in employment, public services, and public accommodations. Under the ADA, an individual is considered to be disabled if that person has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. Individuals with clinical HIV disease or AIDS meet the definition of disabled. A split in opinion among courts in the United States has occurred regarding whether persons with asymptomatic HIV infection meet this definition.

All employers with 15 or more employees must meet the requirements of the ADA. The ADA regulates when employers may inquire into an applicant's disability status and requires employers to keep employees' medical records separate from their personnel files. Employers must reasonably accommodate the needs of an otherwise qualified disabled employee in the performance of the essential functions of his or her job. Similarly, the ADA requires all businesses and public services to reasonably accommodate the needs of otherwise qualified disabled persons in the provision of services.

### **STATE LAW**

California law incorporates the requirements of the federal ADA and also establishes independent state grounds for prohibiting discrimination against disabled persons, including those with HIV infection.

Civil Code Sections 51 and 54 provide that a violation of applicable provisions of the federal ADA shall also constitute a violation of the California Civil Code.



Civil Code Section 51 et seq. (the Unruh Civil Rights Act) prohibits business establishments from discriminating against disabled persons. Civil Code Section 54 et seq., protects disabled individuals from discrimination in the use of public accommodations including but not limited to medical and hospital facilities, public transportation, adoption agencies, private schools, and hotels. They further guarantee equal access to housing accommodations offered for rent, lease, or compensation.

Government Code Section 12900 et seq., (California Fair Employment and Housing Act) prohibits discrimination in employment or housing accommodations based on disability. Fair Employment and Housing Commission regulations (California Code of Regulations, Title 2, Section 7293.5 et seq.) establish that disabled persons include individuals with HIV infection or AIDS, or who are perceived as having AIDS. In addition, as noted previously, Health and Safety Code Section 120980 prohibits using HIV test results for determining an individual's suitability for employment. Similarly, Health and Safety Code Section 121025 prohibits use of public health records pertaining to AIDS to determine employability. In addition, Civil Code Section 1710.2 provides that when transferring real property, owners or their agents need not disclose that a former occupant was HIV infected.

In 2003, Sections 1522.41-1529.2, and 1563 of Health and Safety Code, and Sections 16001.9 and 16003 of the Welfare and Institutions Code were amended to establish training for administrators, licensing personnel, licensed foster parents, and relative care takers that includes the rights of a foster child to have fair and equal access to all available services, placement, care, treatment and benefits, and to not be subjected to discrimination or harassment on the basis of actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status.

Additionally, in 2003 Section 16013 of the Welfare and Institutions Code was added to mandate that all persons engaged in providing care and services to foster children shall have fair and equal access to all available services without harassment or discrimination based on their clients race, ethnic group, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status.

## **APPENDIX A**

### **California Codes and Regulations Sections Specifically Mentioning HIV or AIDS**

#### **Business and Professions Code**

<u>Section</u>	<u>Description</u>
32	AIDS education for health care professionals.
1680	Dental professionals required to follow California Health and Safety Act of 1973 (CalOSHA) infection control standards, guidelines, and regulations.
2221.1	Physicians, surgeons, and podiatrists required to follow CalOSHA infection control standards, guidelines, and regulations.
2660	Physical therapists required to follow CalOSHA infection control standards, guidelines, and regulations.
2761	Nurses required to follow CalOSHA infection control standards, guidelines, and regulations.
2878	Vocational nurses required to follow CalOSHA infection control standards, guidelines, and regulations.
3527	Physicians' assistants required to follow CalOSHA infection control standards, guidelines, and regulations.
3750	Respiratory therapists required to follow CalOSHA infection control standards, guidelines, and regulations.
4521	Psychiatric technicians required to follow CalOSHA infection control standards, guidelines, and regulations.
4955	Acupuncturists required to follow CalOSHA infection control standards, guidelines, and regulations.
18712	HIV testing for licensing of professional boxers and martial arts fighters.

**Civil Code**

<u>Section</u>	<u>Description</u>
56.31	Prohibition on disclosure or use of information regarding a patient's HIV status in a workers' compensation claim.
1710.2	Real property owners not obligated to disclose that previous occupant was HIV infected.

**Education Code**

<u>Section</u>	<u>Description</u>
51265	AIDS instruction for educators.
51930	California Comprehensive Sexual Health and HIV/AIDS Prevention Education Act.
51933	Comprehensive sexual health education in any kindergarten to grade 12.
51934	Required HIV/AIDS Prevention Education for pupils in grades 7-12 .
51935-51936	HIV/AIDS in-service training for school district personnel.
51937-51939	Notice and Parental Excuse, establish the rights of parents to issue a written request to excuse pupils from all or part of comprehensive sexual health education and HIV/AIDS prevention education.

**Family Code**

<u>Section</u>	<u>Description</u>
358	AIDS information for marriage license applicants.

**Government Code**

<u>Section</u>	<u>Description</u>
12900 et seq.	HIV/AIDS employment and housing discrimination.
16531.1	Fund to allow payment to Medi-Cal providers for HIV drug-treatment services when the state budget has not been signed.
22793.2	Health care coverage: AIDS vaccine.

**Health and Safety Code**

<u>Section</u>	<u>Description</u>
135-138	Office of Women's Health as a clearinghouse for information on women and AIDS.
439.905	Research on effectiveness of RU-486 in treating AIDS.
1250.4	HIV/AIDS testing and treatment for correctional inmates and Youth Authority wards.
1250.11	Guidelines for preventing transmission of HIV in health care settings.
1337.1	AIDS education programs in skilled nursing and intermediate care facilities.
1367.45	Health care coverage: AIDS vaccine.
1374.16	HIV/AIDS defined as a condition or disease that requires specialized medical care.
1389.1	Health insurance applications must state that an HIV test may not be required or used as a condition for obtaining health insurance.
1522.41	Administrator training on fair and equal access to available services for HIV-positive foster children.
1529.2	Foster parent training on fair and equal access to available services for HIV-positive foster children.
1562.5	HIV training for administrators of adult residential facilities and program directors of social rehabilitation facilities.
1563	Social services licensing personnel training on fair and equal access to available services for HIV-positive foster children.
1568.01-1568.092	Residential care facilities for persons with HIV/AIDS.
1603.1-1603.4	HIV testing of donated blood and blood components; reporting of transfusion-related AIDS cases.

**Health and Safety Code** (continued)

<u>Section</u>	<u>Description</u>
1621.5	Donation of blood, breast milk, semen, body organs, or other tissues by persons knowingly infected with HIV/AIDS is a felony.
1644.5	HIV screening of donors of tissue for transplantation.
1760-1761.8	Pediatric day health and respite care facilities for children with HIV.
1797.175	AIDS training for prehospital (emergency medical) personnel.
7155.5	HIV screening of anatomical gift donors.
11362.5-11362.9	Use of marijuana by people with AIDS and the Marijuana Research Act of 1999.
11757.59	AIDS testing and counseling services for alcohol and drug abusing pregnant and parenting women and their infants.
11998-11998.3	State drug and alcohol abuse master plan to include AIDS information.
11999-11999.3	State-funded HIV/AIDS education and prevention outreach programs to intravenous drug users exempt from prohibitions on discussion of responsible but unlawful use of drugs or alcohol.
38070-38081.1	Administrative provisions applicable to the California AIDS Program (Section 120800 et seq.).
100117	Legislative findings and declarations regarding the AIDS pandemic.
100119	DHS, Office of AIDS designated as lead agency for coordinating state HIV/AIDS programs.
100236	Advance payments to local health departments for specified services, including funding for HIV education and prevention.

**Health and Safety Code** (continued)

<u>Section</u>	<u>Description</u>
100237	Inclusion of HIV/AIDS in studies with women and minorities as subjects.
101300-101310	Local public health service contract options for AIDS programs.
106005-106025	Eliminating health disparities, including HIV/AIDS in the Los Angeles County Service Planning Area.
110403	Advertising of AIDS drugs.
111605	Approvals for AIDS-related drugs.
120290	Willful exposure of another person to any contagious, infectious, or communicable disease is a misdemeanor.
120291	Acting with specific intent to infect another person with HIV is a felony; victim identity protection.
120292	Disclosure of identifying information, diagnosis, testing, and treatment information relating to HIV in a criminal investigation for violation of Section 120291.
120775	HIV and AIDS definitions.
120800-120871	California AIDS Program.
120800	Legislative intent.
120805	Duties of Department of Health Services.
120815	Funding of residential AIDS shelters.
120820	Confidentiality of personal data.
120825	Duties of Department of Health Services Director.
120830	Pilot projects of care initiated through block grant program.
120835	Private health insurance premiums of participants in pilot care projects.
120840	AIDS mental health project.
120845	Pilot programs in AIDS-related substance abuser programs.
120850	AIDS research funding allocation for University of California.

**Health and Safety Code (continued)**

<u>Section</u>	<u>Description</u>
120855	Home and community-based services.
120860	Prevention, education, testing, and counseling programs for women and children.
120865	Review of programs; target populations; unmet and projected needs; report.
120870	Alkyl nitrites sales.
120871	HIV tests, counselors, and training.
120875-120895	AIDS Information
120875	AIDS information for school districts.
120880	AIDS information to employees of school districts.
120885	Legislative declarations on testing for HIV antibodies separate from blood donation.
120890	Designation of counties for alternative testing sites.
120895	Provisions governing operation of alternative test sites; anonymity of testing.
120900-120915	Early intervention projects.
120917	Authorization for DHS, Office of AIDS to conduct rapid HIV test research with CDC.
120920	Inclusion of the benefits of early intervention within information and education grants.
120925-120935	Provision of Azidothymidine (AZT).
120950-120968	HIV Treatment (AIDS Drug Assistance Program).
120975-121020	Mandated Blood Testing and Confidentiality to Protect Public Health.
120975	Prohibition against identification of individuals testing for HIV antibodies.
120980	Unauthorized disclosures, penalties, damages, prohibited use of results.
120985	Disclosure of test results to health care providers.
120990	Written consent of test subjects; exceptions.
120995	Certain actions and testing exempted from confidentiality provisions.
121000	Disclosure and consent in medical testing of prisoners.

**Health and Safety Code** (continued)

<u>Section</u>	<u>Description</u>
121005	Liability of state department, blood bank, or plasma center.
121010	Disclosure to certain persons without written consent.
121015	Disclosure to spouse, sexual partners, needle sharers, county health officer.
121020	Consent for incompetent persons.
121025-121035	AIDS Public Health Records Confidentiality Act.
121050-121070	AIDS Public Safety and Testing Disclosure.
121050	Purpose.
121055	Disclosure in connection with certain sexual crimes.
121056	Disclosure of test results to individuals who conduct forensic testing.
121060	Disclosure in connection with assaults on officers.
121065	Guidelines for testing in connection with provisions of this Chapter.
121070	Disclosures in connection with custodial facilities.
121075-121125	AIDS Research Confidentiality Act.
121130-121140	AIDS Exposure Notification.
121130	Legislative intent.
121132	Definitions.
121135	Testing and disclosing guidelines -health care providers/first responders.
121140	Liabilities and penalties.
121150-121180	AIDS research and workshop grants.
121200-121225	AIDS Vaccine Research and Development Grant Program.
121250-121280	AIDS vaccine development.
121300-121335	AIDS clinical trial grant award for the prevention of maternal transmission of HIV.
121340	HIV reporting requirements.
121348-121348.2	Post-exposure prophylaxis.



**Health and Safety Code** (continued)

<u>Section</u>	<u>Description</u>
121362	Confidentiality of HIV test results in connection with reports on tuberculosis patients.
122420	Inclusion of information on HIV/hepatitis C co-infection in DHS outreach, education, training, and care programs.
123148	Electronic posting of laboratory results for HIV antibody tests is prohibited.
125085-125090	HIV testing during prenatal care.
125092	Culturally sensitive HIV informational materials.
125107	Offering of HIV testing and counseling to pregnant women; documentation of consent.
129755	Seismic safety standards for federally owned facilities providing services to persons with HIV infection.

**Insurance Code**

<u>Section</u>	<u>Description</u>
790-790.10	Payment of AIDS-related insurance claims.
799-799.10	Life and disability income insurance and AIDS risks.
10145.2	Health care coverage: AIDS vaccine.
10291.5	Disability insurance applications to include notice of prohibition of HIV testing for health insurance.

**Labor Code**

<u>Section</u>	<u>Description</u>
5406 - 5406.6	Statute of limitations for collecting HIV-related workers' compensation death benefits for certain workers.

**Penal Code**

<u>Section</u>	<u>Description</u>
647f	Prostitution is a felony for persons previously convicted of prostitution or other sex offenses and found to be HIV-infected.

**Penal Code** (continued)

<u>Section</u>	<u>Description</u>
1001.10-1001.11	AIDS education program in drug abuse and prostitution cases.
1202.1-1202.6	AIDS testing for persons convicted of sex offenses and prostitution.
1463.23	County use of fines for certain offenses to provide AIDS education program for drug abuse and prostitution cases.
1524.1	HIV testing of criminal defendants when there is probable cause to believe transmission of HIV from the defendant to the victim could have occurred.
2692	Contracting for housing, care, and treatment of Department of Corrections inmates with HIV/AIDS.
4018.1	HIV/AIDS information for county jail inmates sentenced for drug-related offenses.
5008.1	HIV/AIDS information for inmates of state correctional facilities.
7500-7555	HIV testing of prisoners.
7552	Education and prevention program for correctional, custodial, and law enforcement agencies.
7553	Periodic anonymous serologic HIV surveys of county/city inmates.
7554	Reporting of occupational exposure to HIV among peace officers.
7555	Current HIV testing, reporting, and notification provisions for law enforcement personnel extended to January 1, 2005.
11225-11235	Injunction, abatement, and prevention of bathhouses permitting conduct capable of transmitting AIDS.
12022.85	Sentence enhancement for persons convicted of committing sex offenses while knowingly infected with HIV.

## **Revenue and Taxation Code**

<u>Section</u>	<u>Description</u>
6363.3	Organizations that provide hospice services to persons with HIV disease are included in the definition of nonprofit organization.

## **Vehicle Code**

<u>Section</u>	<u>Description</u>
5071	Red ribbon special interest license plate funds.

## **Welfare and Institutions Code**

<u>Section</u>	<u>Description</u>
903.8	AIDS information for foster parents.
1123	HIV/AIDS information for wards of the Youth Authority.
1768.9	HIV testing of wards of the Youth Authority.
5328	Disclosure to emergency response employees regarding exposure to HIV from recipients of mental health services.
14083.5	Hospital contracting and bidding procedures for treating Medi-Cal beneficiaries with AIDS.
14088.85	Primary case management for Medi-Cal beneficiaries with HIV.
14105.43-14105.435	Inclusion of HIV/AIDS-related drugs on Medi-Cal list of contract drugs.
14132-14132aa	Home and community-based services and congregate living facilities for Medi-Cal beneficiaries with AIDS.
14137.6	Treatment of Medi-Cal beneficiaries associated with investigational HIV/AIDS drugs.
14148.9-14148.91	Reporting the number of HIV-infected infants born in certain high-risk populations.
14503.5	HIV/AIDS information for recipients of state-funded family planning services.

**Welfare and Institutions Code (continued)**

<u>Section</u>	<u>Description</u>
15800-15804	San Mateo County: Home care assessment pilot project.
16001.9	Fair and equal access to available services for HIV-positive foster children.
16003	Orientation and training to the relative or nonrelative extended family member caregiver on fair and equal access to available services for HIV-positive foster children.
16013	Fair and equal access for foster care providers to available programs and services, without discrimination based on their clients' or their own actual or perceived HIV status.
16135	Training and services to facilitate the adoption of HIV positive and other specified children.
16525-16525.4	Services for HIV-positive children in foster care.
16800.5-16818	Audits of state-funded, county-operated AIDS programs.
16915	County indigent health care for persons with AIDS.

**California Code of Regulations Applicable to HIV or AIDS**

<u>Title &amp; Section</u>	<u>Description</u>
8:5193	Occupational exposure to blood or other potentially infectious material.
9:7141-7143	Disclosure of HIV test results of Department of Rehabilitation applicants and clients.
16:1633	HIV infection control requirements for osteopaths.
17:1004	HIV reporting requirements for blood banks and plasma centers.
17:1230	Approval of laboratories for use of HIV antibody test.
17:2500-2511	Reporting requirements for certain diseases and conditions (including AIDS).
17:2641.5-2643.20	HIV reporting regulations.

## **APPENDIX B**

### **Glossary of Selected Terms**

#### **Acquired Immunodeficiency Syndrome (AIDS)**

A disease of the immune system caused by HIV, and characterized by failure of the body's immune system to protect against infections and certain cancers. People with AIDS often suffer infections of the lungs, brain, eyes and other organs, and frequently suffer debilitating weight loss and diarrhea.

#### **Autologous**

In blood donation, referring to a situation where the donor and the recipient are the same individual.

#### **California Codes**

California legislative statutes that are numbered and grouped into similar categories are called codes. For example, health issues are grouped together in the Health and Safety Codes, and Penal Codes are the body of statutes dealing with crimes and their punishment. The terms code and statute are often used interchangeably.

#### **Chaptered Bill**

A bill is chaptered by the Secretary of State after it has passed through both houses of the Legislature.

#### **Et Seq**

Abbreviation for et sequens (Latin) meaning, "and the following."

#### **Ex parte**

On behalf of only one party, without notice to any other party. For example, a request for a search warrant is an ex parte proceeding, since the person subject to the search is not notified of the proceeding and is not present at the hearing.

#### **Felony**

A serious crime, generally punishable by a penalty of imprisonment for more than one year.

#### **Human Immunodeficiency Virus (HIV)**

HIV is the virus that causes AIDS. California law distinguishes between simply being infected with HIV (testing positive) and having AIDS. Federal Centers for Disease Control and Prevention criteria define when a person with HIV infection can be diagnosed as having AIDS.

**Misdemeanor**

A charge less serious than a felony, usually punishable by a fine or imprisonment for less than one year.

**Regulations**

Regulations are enacted through an administrative process overseen by the Office of Administrative Law, an independent agency within the Executive Branch. Regulations may be needed to implement, interpret, or make specific a statute or code section. Regulations must be authorized by statute and they have the force of law. Collectively, California regulations form the California Code of Regulations.

**Statute**

A statute is a law that has been enacted by the legislature. Statutes that deal with related issues are numbered and grouped together into codes. California statutes are chaptered bills.

**APPENDIX C**  
Laws Passed 2003 Relating to HIV/AIDS and  
Their Corresponding Codes and Sections

<b>Assembly Bills (AB)</b>	<b>Code and Section</b>
<b>AB (Dymally)</b> – Urban Community Health Institute	<b>Health and Safety Code:</b> Adds: Section 106000
<b>AB 458 (Chu)</b> – Foster care	<b>Health and Safety Code:</b> Amends: Sections 1522.41, 1529.2 and 1563 <b>Welfare and Institutions Code:</b> Amends: Sections 16001.9 and 16003 Adds: Section 16013
<b>AB 786 (Daucher)</b> – San Mateo County: Home Care Assessment Pilot Project	<b>Welfare and Institutions Code:</b> Adds and Repeals: Sections 15800-15804
<b>AB 879 (Koretz)</b> – Post-Exposure Prophylaxis	<b>Health and Safety Code:</b> Adds: Sections 121348-121348.2
<b>AB 1676 (Dutra)</b> – HIV: Maternal and Newborn Health	<b>Health and Safety Code:</b> Amends: Sections 125085, 125090 and 125107 Adds: Section 125092
<b>Senate Bills (SB)</b>	<b>Code and Section</b>
<b>SB 71 (Kuehl)</b> – California Comprehensive Sexual Health and HIV/AIDS Prevention Education Act	<b>Education Code:</b> Amends: Sections 221.5, 37631, 41840, 48980, and 51851 Adds: Sections 51930-51939 Repeals: Sections 51201.5, 51229, 51229.5, 51229.8, 51240, 51550 and 51820*
<b>SB 1081 (Committee on Health and Human Services)</b> – Human Blood	<b>Health and Safety Code:</b> Amends: Sections 1603.1, 1603.2, 1603.3, 1603.4, 1621.5 and 120990
<b>Senate Committee Resolution (SCR)</b>	<b>Code and Section</b>
<b>SCR 11 (Soto)</b> – HIV and AIDS Drug Treatment: Public Pensions	N/A

\*Not all repealed sections were HIV/AIDS related.



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